



HOW TO BECOME A CERTIFICATED AIR CARRIER

Prepared by:

Air Carrier Fitness Division
Office of the Secretary
Department of Transportation
400 Seventh Street, S.W.
Washington, D.C. 20590

202-366-9721

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PART I

APPLICATION PROCEDURES AND EVIDENCE REQUIREMENTS

Under Title 49 of the United States Code (the statute),¹ anyone who wants to provide air transportation service² as an air carrier must first obtain two separate authorizations from the Department of Transportation: “safety” authority in the form of an Air Carrier Certificate from the Federal Aviation Administration (FAA), and “economic” authority in the form of either a certificate for interstate³ or foreign passenger and/or cargo and mail authority granted under section 41102 of the statute, or an all-cargo air transportation certificate⁴ granted under section 41103 of the statute from the Office of the Secretary of Transportation (the Department).⁵ A certificate for interstate authority or an all-cargo air transportation certificate may be issued after a finding by the Department that the applicant is “fit, willing, and able” to perform the service it proposes. The award of a certificate for foreign authority must also be found to be “consistent with the public convenience and necessity.”

This packet contains information on how to obtain interstate, foreign, or all-cargo certificate authority. Information on other types of air carrier authority may be obtained from the Department as follows:

For information on air taxi authority, contact:

¹ Pub. L. 103-272, enacted July 5, 1994, revised and recodified the Federal Aviation Act within Subtitle VII of Title 49, United States Code (Transportation). Copies of the statute may be obtained directly from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

² “Air transportation,” as defined by section 40102(a)(5) of the statute, means foreign air transportation, interstate air transportation, or the transportation of mail by aircraft.

³ As defined in section 40102(a)(25) of the statute, “interstate air transportation” means the transportation of passengers or property by aircraft as a common carrier for compensation, or the transportation of mail by aircraft, between points in the United States and the District of Columbia, as well as between points in the United States or the District of Columbia, on the one hand, and points in U.S. territories or possessions, on the other, or between points in U.S. territories or possessions.

⁴ “All-cargo air transportation,” as defined in section 40102(a)(10) of the statute, means the transportation by aircraft in interstate air transportation of only property or only mail, or both.

⁵ There are certain exceptions to this rule. Section 40109 of the statute allows the Department to grant exemptions from the certificate requirement where it finds that such exemptions are “consistent with the public interest.” Such exemptions may be granted to individual air carriers or to groups or classes of air carriers. Carriers proposing to operate only small aircraft, that is aircraft designed to configure 60 or fewer seats or with a payload capacity of less than 18,000 pounds, are exempt from the certificate requirements and may obtain authority as an air taxi operator or commuter air carrier in accordance with the provisions of Part 298 of the Department's economic rules (14 CFR 298).

Special Authorities Division
Department of Transportation
X-57, Room 6401
400 Seventh Street, S.W.
Washington, D.C. 20590
(202) 366-2402 or -2403

For information on commuter air carrier authority, contact:

Air Carrier Fitness Division
Department of Transportation
X-56, Room 6401
400 Seventh Street, S.W.
Washington, D.C. 20590
(202) 366-9721

For information on authority as a foreign air carrier, contact:

Foreign Air Carrier Licensing Division
Department of Transportation
X-45, Room 6412
400 Seventh Street, S.W.
Washington, D.C. 20590
(202) 366-2391

For information on obtaining an Air Carrier Certificate from the FAA, contact a local FAA Flight Standards District Office in your area or:

Federal Aviation Administration
Air Transportation Division, AFS-200
800 Independence Avenue, S.W.
Washington, D.C. 20591
(202) 267-8166

APPLICATION

Reprinted in Part III of this packet is a copy of Part 201 of the Department's Regulations, which describes the rules for filing an application for certificate authority. Separate applications are required to obtain interstate authority and authority to serve foreign points.⁶ A sample application is included in Part II of this packet.

The fees for filing applications for certificate authority are as follows:

⁶ Applications for scheduled or charter interstate or foreign certificate authority are filed under 49 U.S.C. 41102. Applications for all-cargo air transportation certificates are filed under 49 U.S.C. 41103.

Interstate scheduled certificate authority	\$ 850
Foreign scheduled certificate authority	\$ 900
Both interstate and foreign scheduled certificate authority	\$1,750
Interstate charter certificate authority	\$ 850
Foreign charter certificate authority	\$ 600
Both interstate and foreign charter certificate authority	\$1,450
All-cargo air transportation certificate authority	\$ 670

At the time an application is filed, the supporting information that the applicant will rely on to convince the Department that it should be awarded the requested authority should be submitted. The evidentiary material required to be submitted with the application is detailed in section 204.3 of Part 204 of the Department's Regulations, a copy of which can be found in Part III of this packet. A discussion of these requirements is contained in the section below on “**Evidence Requirements.**” Should the applicant wish to seek confidential treatment for any portion of this material, it should use the procedures set forth in section 302.39 of the Department's Regulations, a copy of which is included in Part III. If an applicant is seeking both interstate and foreign certificate authority, the evidence in support of the applicant's fitness to operate need only be included with one of the applications and incorporated by reference in the other.

Applicants for certificate authority are also required to serve their applications on persons who may have an interest in the proposed operation. A list of the persons requiring service is contained in section 302.1705(b) of the Department's Regulations, which may be found in Part III.

An original and 12 copies of each certificate application and evidentiary material, together with the required filing fee, should be sent to:

Documentary Services Division
Department of Transportation, C-55
400 Seventh Street, S.W.
Washington, D.C. 20590
(202) 366-9322

APPLICATION PROCESSING PROCEDURES

Upon receipt of an application for certificate authority, the Documentary Services Division will assign a docket number to the application and forward the material to the Air Carrier Fitness Division for review and processing.

Applications for air carrier authority are processed under Subpart Q of the Department's Procedural Regulations (14 CFR 302.1701 *et seq.*, which is reprinted in Part III). Under Subpart Q, after an application is filed, staff of the Air Carrier Fitness Division will review it to determine whether all of the information required to be filed has been submitted. Usually, this review will be completed within 21 days after the application is filed. If the application is not complete, the Air Carrier Fitness staff will so advise the applicant and defer processing of the application until all of the required information is received. Any such subsequent filings should be submitted to the Documentary Services Division, with an original and 12 copies, referencing the docket number(s) assigned to the application. Interested parties have 28 days from the date the application (or any subsequent amendment) is filed to submit answers to the application.

Once the answer period has expired and all filings have been made, the Department will decide on the procedures it will follow in handling the application.

In cases where there appear to be no material issues of fact that cannot be resolved on the written record, the Department may choose to act on the application by use of show-cause procedures.⁷ In such cases, an order will be issued tentatively finding the applicant fit and proposing to issue it a certificate authorizing the requested service. A copy of the order will be sent to the applicant, any person who has filed an answer to the application, and interested FAA offices, and a summary of the order will be published in the Federal Register. The order will allow interested persons an opportunity, usually 15 days, to file comments either in support of or in opposition to the proposed fitness findings and award of authority. If no objections are filed, an order finalizing the tentative findings will be issued. If objections are filed, the applicant will have an opportunity to reply to them before further Department action is taken. Based on these responses, the Department will then determine what further procedural steps, if any, may be warranted, such as requesting additional information from the applicant or setting the case for hearing before an Administrative Law Judge. If such

⁷ In cases where there are substantial questions about a carrier's fitness to operate, the Department may issue an order dismissing or proposing to deny the application. If an application raises substantive questions of fact, is controversial, or presents complex issues that cannot be resolved on the written record, the Department will institute a fitness investigation directing that the matter be considered in an oral evidentiary hearing before an Administrative Law Judge. Once the application is assigned, the Judge will set a procedural schedule for exhibits, hearings, and briefs. After these procedures have been completed, the Judge will review the information submitted and the arguments on brief, and issue a recommended decision on the applicant's fitness to provide the air transportation it proposes. After the Judge issues a decision, the Department's Assistant Secretary for Aviation and International Affairs will review that recommendation and issue a final decision on the application.

further procedures are not employed, the Department will issue a final order on the merits.

If an application to provide service to a foreign point is involved, the Department's final decision to grant or deny the requested authority is subject to review by the President, who has 60 days from the date the Department sends him the decision to review the action. If the Department's decision is not disapproved by the President within 60 days, it will become final. Department actions on requests for interstate authority are not subject to review by the President, and are final at the time they are issued.

If, at the time the Department issues its final decision and award of authority, the applicant does not hold an Air Carrier Certificate and Operations Specifications from the FAA authorizing it to conduct its proposed operations, the economic authority will not become *effective* until the applicant has received the required FAA authority and presented evidence of such to the Department. Further, at the time it presents its FAA documents to the Department, the applicant must also supply certain updated fitness information and proof of insurance coverage (see the discussion below under “**Other Requirements**”), and meet any other conditions imposed by the Department in its final decision.

Under the Department's Regulations (section 201.5 reprinted in Part III), an applicant may not (1) advertise, list schedules, or accept reservations for its proposed air transportation until the Department issues its final decision on the applicant's certificate application, or (2) accept payment or issue tickets for its proposed air transportation until the certificate has been made *effective* by the Department. An applicant may advertise or list schedules for its proposed services between the time the Department issues its final decision on the application and the time the authority is made effective only if any such listings or advertisements prominently state “This service is subject to receipt of government operating authority.”

In calculating start-up time, an applicant should anticipate that the Department will require a minimum of three months to process the application beginning from the time the Department receives a *complete* application. Additional time would be required if objections are filed or complex or unusual issues are raised by the application. This estimate does not take into account the time required to complete any necessary FAA certification work.

FITNESS EVIDENCE REQUIREMENTS

The Department uses a three-part test to determine the fitness of a company. First, the Department examines the managerial competence of the applicant's key personnel to see whether they have sufficient business and aviation experience to operate an airline, and to determine that the management team, as a whole, possesses the background and experience necessary for the kind of operations to be undertaken. Second, the

Department reviews the applicant's operating and financial plans to see whether the applicant has a reasonable understanding of the costs of starting its operations and has a plausible plan for raising the necessary capital. Before being granted effective air carrier authority, the applicant must submit third-party verification that it has acquired the necessary capital. Third, the Department looks at the applicant's compliance record to see whether it and its key personnel have a history of safety violations or consumer fraud activities that would pose a risk to the traveling public, or otherwise have a history that would lead us to believe that the applicant is unlikely to comply with government laws, rules and directives. In addition, the applicant must establish that it is a U.S. citizen. The information required by Part 204 is intended to provide the Department with a sufficient basis upon which to determine whether an applicant is qualified in each of these areas to provide the public with its proposed service.

The following pages contain a discussion of the data required by section 204.3, the rule which contains the Department's evidentiary requirements for prospective certificated air carriers. (Section 204.3 can be found in Part III of this packet.) An applicant should address each point below. If the answer to the information requested is "not applicable" or "none," please so state for each item.

NOTE: Applications should not be filed with the Department until all of the required fitness information has been assembled. The Department may reject an application if it is found to be materially deficient in any of the data required to be filed (e.g., if the management team or financing arrangements are incomplete). If an applicant has any questions concerning the filing requirements or fitness procedures, those questions may be addressed to the staff of the Air Carrier Fitness Division (202-366-9721).

In addition, if, during the course of the Department's fitness review, any changes occur in the applicant's ownership, management team, compliance history, financial position, or service proposal so as to render inaccurate any representations of its fitness made in its application or in answers provided to subsequent information requests from the Department, the applicant must file promptly with the Department's Documentary Services Division a formal supplement to its application in the docket describing the details of any such changes.

General

The purpose of the information described below is to provide the Department with some background on the applicant, including information on its ownership structure, the type of service being provided currently as well as that proposed, and to demonstrate that the applicant is a U.S. citizen.

Data Required

1. The name, address, and telephone number of the applicant.
2. The form of the applicant's organization (for example, sole proprietorship, partnership, or corporation).
3. The state law(s) under which the applicant is organized and the date of incorporation or organization.
4. If the applicant is a corporation, a statement provided by the Office of the Secretary of State, or other agency of the state in which the applicant is incorporated, certifying that the applicant corporation is in good standing. This statement should reflect the applicant's corporate standing not more than one month prior to the date the application is filed.
5. A sworn affidavit stating that the applicant is a citizen of the United States.⁸ (See Part IV of this packet for a sample of the affidavit required.) If any officers, directors, owners, or other persons who have the power to influence the applicant, whether through ownership, debt, or other interest, are not U.S. citizens, state the name and citizenship of each, and describe each such person's interest in the applicant.
6. A list of all persons (individuals or organizations) that own or control at least 10 percent of the stock of the applicant, indicating the number of voting shares and the corresponding percentage of the total shares outstanding that are held by each, along with their address, citizenship, and principal business. If any stockholder is an organization, provide the name, address, citizenship, and principal business of the individuals who own or control at least 10 percent of the stock of the organization. If the applicant's stock is held by someone for the benefit or account of a third party, give the name, citizenship, and principal business of that person or organization. If any of these persons are related by blood or marriage or have had any financial interest in, or serve or have served as an officer or director of any other air carrier, common carrier, or person substantially engaged in the business of aeronautics or persons whose principal business (in purpose or fact) is the holding of stock in or control of any aviation-related entity, that relationship should be described.
7. A description of the classes or types of the applicant's stock that are authorized and the number of shares of each class or type that are issued and outstanding. If any

⁸ Section 40102(a)(15) of the statute defines a "citizen of the United States" as: (1) an individual who is a citizen of the United States; (2) a partnership each of whose partners is an individual who is a citizen of the United States; or (3) a corporation or association organized under the laws of the United States or a state, the District of Columbia, or a territory or possession of the United States, of which the president and at least two-thirds of the board of directors and other managing officers are citizens of the United States, and in which at least 75 percent of the voting interest is owned or controlled by persons that are citizens of the United States. In addition to meeting these specific numerical standards, we have interpreted the statute to require that a U.S. air carrier, in fact, be under the actual control of U.S. citizens.

person or organization holds options to convert debt to equity or one type of stock to another type, identify the person or organization and discuss the circumstances under which such conversion may occur.

8. A list of the applicant's subsidiaries, if any, or of any other company (including any air carrier, common carrier, or person substantially engaged in the business of aeronautics) in which the applicant has a financial interest. The principal business of each of these companies, and their relationship to the applicant should be discussed.

9. A description of all authority the applicant holds or has held to conduct air transportation operations from state, federal, and foreign governments. This would include, for example, a certificate from the FAA or a Canadian Transport Commission license. If additional authority is needed from the FAA in order to conduct the proposed operations, the status of any application for that authority, and the name, telephone number, and address of the FAA personnel responsible for processing that application should be provided. If no additional authority is needed, the name, address, and telephone number of the applicant's FAA principal operations inspector should be included.

10. A narrative history of the applicant, including when it was formed and by whom; the nature of the business initially and how it has changed or grown; any ownership changes; the applicant's service area and the primary markets currently being served; and the total number of employees currently employed.

11. A list of the applicant's current fleet of aircraft, including the number and seating/cargo capacity of each type of aircraft and whether they are owned or leased. If the aircraft are leased, provide the identity of the lessor. A sworn affidavit stating that each of these aircraft has been certified by the FAA and complies with all applicable FAA safety standards should also be provided by applicants that already operate aircraft. For non-operating applicants, this affidavit should be submitted at the time the company's FAA documents are submitted to the Department to make its authority effective. (See Part IV of this packet for a sample of the affidavit required.)

Management Expertise and Technical Ability

The purpose of this information is to demonstrate that the applicant has a sufficient number of qualified, competent personnel directing its operations.

Data Required

The following information concerning the existing and/or prospective key management personnel⁹ should be submitted:

1. The individual's position and responsibilities with the applicant and the date employed or to be employed. If an individual has been employed with the applicant for a number of years, indicate all positions held during that time, with dates. If any key person is employed or to be employed by the applicant on less than a full-time basis, state what percentage of the employee's time will be spent on the applicant's business, and provide details of his or her concurrent occupation(s).
2. A resume for each of the key personnel stating:
 - a. Full name, current address, and telephone numbers.
 - b. All previous employment (both aviation and non-aviation) including: name of employer, location (city, state), type of business, position held, description of responsibilities, and dates employed. If the previous employer held any aviation authority, state the type (*e.g.*, air taxi, commuter, fixed base operator, certificated air carrier). Any periods of unemployment should be accounted for.
 - c. Education and training, including names of institutions, dates attended, and any certificates or degrees received. If the person holds a certificate or license from the FAA (such as an Airline Transport Pilot or Airframe & Powerplant Mechanic license), these, including their numbers, should be listed, as well as the number of recorded hours of flying time for the Chief Pilot.
3. The citizenship of each such person.
4. The amount of stock (or other interest) held in the applicant, if any, by each.
5. A description of the officerships, directorships, stock (if 10 percent or more), or other interests each holds in any other air carrier, common carrier, or person substantially engaged in the business of aeronautics.

⁹ "Key personnel" refers to the President, Chief Executive Officer, Chief Operating Officer, General Manager, Chief Financial Officer, and Vice President(s), if any, the Director of Operations, the Director of Maintenance, and the Chief Pilot, as well as the Chairman and members of the Board or other key officials who may not be involved with the day-to-day operation of the company but who are primary stockholders and/or whose influence on the policy of the applicant is, or potentially could be, substantial.

Financial Position and Operating Plans

This information will be used to assess the financial position of the applicant and the applicant's access to the capital required to commence operations.

Data Required

The following financial information about the applicant should be provided:

1. Balance sheets and income statements of the applicant and all relevant corporations,¹⁰ together with their accompanying explanatory footnotes (including a description of the company's significant accounting policies, such as for depreciation, amortization of intangibles, overhauls, unearned revenues, and cost capitalization), for the three most recent calendar or fiscal years.¹¹ Current financial information, for a period ending no more than three months prior to the date of filing, should also be included. This requirement may be met by the submission of financial statements, preferably audited, or 10K reports filed with the Securities and Exchange Commission. The financial documents should include a statement as to who prepared them, his or her qualifications and relationship, if any, to the applicant, and whether they were prepared in accordance with Generally Accepted Accounting Principles. If an annual audit, review, or compilation by an independent CPA is performed, the name and address of the firm, and type of services provided should be listed.
2. Statements which include a description of the following:
 - a. Any liens or encumbrances against any of the applicant's assets, including those pledged as collateral for any outstanding obligations.
 - b. Any major commitments into which the applicant has entered during the past 6 months, or proposes to enter into during the next 6 months, including bank or other institutional financing, private financing, issuance of bonds or stock in the applicant, or major contracts to perform services.

¹⁰ "Relevant corporation" is defined in Part 204 as the applicant, any predecessor of the applicant (including any company in which the directors, principal officers or owners have or once had a substantial interest, or any company whose operations were acquired by, or merged with, the applicant), or any organization which has a significant financial or managerial influence on the applicant, *e.g.*, (1) a parent corporation; (2) any entity that holds more than 50 percent of the outstanding voting stock of the applicant; (3) any entity that holds between 20 and 50 percent of such stock and that also has at least a 25 percent representation on the board of directors, participates in policy-making processes, engages in substantial inter-company transactions, or has managerial personnel with common responsibilities in both companies; and (4) any subsidiary of the applicant.

¹¹ If an applicant has been in business less than three years, only information for as long as it has been in business is required, unless there is a predecessor company. In the latter instance, information on the predecessor company is necessary. For new companies (those without any prior operations), a pre-operating balance sheet giving a complete description of the financial resources available to mount the proposed services should be filed.

- c. Any transactions in which the applicant sold or exchanged any major assets (aircraft, land, buildings, etc.) during the past 6 months, or plans to sell or exchange within the next 6 months, including how any funds realized from those transactions were or are intended to be used.
 - d. Any liabilities more than 60 days past due at the time of the application, including the amount and the circumstances under which they are past due and will be paid.
 - e. Any contingent liabilities that may have an effect on the applicant's financial posture (*i.e.*, lawsuits, pending judgments), including plans to meet those obligations.
 - f. Any events which occurred after the preparation of the most recent financial statements which may have a significant impact on the financial position or on the operations of the applicant. If no such events have occurred, provide a statement to that effect.
3. An estimate of the amount of capital the applicant will need to commence operations which shows (1) the basis of the estimate (*e.g.*, the amounts for pre-operating costs, including aircraft deposits or leases, office and hangar space, insurance, salaries, training, preparation of FAA manuals, working capital, etc.), and (2) the proposed form and source of capital.¹²
- a. If the resources of an individual or other organization would be made available to the applicant in order to sustain operations, provide a statement from the individual or organization of the amount of such available resources and the terms or conditions under which such funds will be provided. Copies of the personal or corporate financial statements of the individual or organization should also be provided. The liquidity of any assets, other than cash, should be made clear through appropriate footnotes, *e.g.*, the current market value of stocks and bonds that can be readily converted to cash should be noted. Wherever possible, third-party verification of the assets and values should be provided (*e.g.*, letters from banks or stockbrokers holding liquid assets, or recent appraisals of real assets).

¹² Before being granted an effective certificate, an applicant for either charter or scheduled authority must provide independent, third-party verification that it has available to it resources (*e.g.*, cash, lines-of-credit, bank loans) sufficient to cover all of its pre-operating costs plus a reserve equal to the operating expenses projected to be incurred by the applicant during three months of normal operations. Because projected expenses during the first several months of operations do not include all costs that will be incurred during a normal period of operations, the three-month standard is based on one-quarter of the first year's operating cost forecast. In calculating available resources, projected revenues cannot be included. This financing guideline should not be considered a "zero revenue test"; that is, an applicant should not construct an artificial three-month projection showing reduced operating costs based on the theory that if there are no revenues there will be fewer variable flight and customer-related expenses, and that a smaller capital reserve will therefore be needed.

- b. If borrowed capital or a line-of-credit is to be employed, the total amount, current balance, source, security, provisions to convert the debt to equity, and terms of repayment to the lender should be stated. Verification of this information from the lender should be provided.
 - c. If financing is to be obtained through a private stock offering, verification from the underwriter as to the status of the offering should be provided and copies of private placement agreements or offering documents should be submitted. If capital is to be sought through a public stock offering, copies of the offering documents filed with the Securities and Exchange Commission should be included.
 - d. A letter from the applicant's bank confirming the amount on deposit and bank loans and lines-of-credit, if any, should be provided.
4. The applicant's service proposal and a forecast balance sheet and profit and loss statement (broken down by month or by quarter) for the first normal year of certificated operations. These documents should include ample notes explaining the basis for the amounts shown and whether the statements were prepared on a cash or accrual basis. The description should be in sufficient detail to allow the Department's staff to replicate the mathematics involved and to determine the reasonableness of the forecast.

The revenue forecast should indicate:

- a. For applicants for scheduled authority, the proposed markets and number of daily flights in each market; for applicants for charter authority, the types of charters to be operated (*e.g.*, public, single-entity, Department of Defense) and the proposed geographic areas to be served.
- b. The type, seating/cargo capacity, and number of the aircraft to be used.
- c. The number of passengers or amount of cargo to be carried and expected load factors.
- d. The fares or rates to be charged, and the resulting gross revenues.
- e. The total number of revenue block hours and revenue miles expected to be flown, and the extent of any seasonal traffic peaks.

The expense data should show:

- a. Detail by expense category (direct and indirect), indicating how the amounts were computed.
 - b. For indirect expenses, if the applicant is engaged in other operations, expenses should be allocated on a rational basis between the proposed certificated operations and the other operations, with appropriate explanations. The applicant may choose to prepare a consolidated income statement for the entire business in such situations, with separate columns for the proposed certificated operations and the other operations, or present only the revenues and expenses for the certificated operations.
 - c. If aircraft or other facilities are to be acquired to conduct the proposed services, a description of the plans for obtaining and financing those items should be provided.
5. A description of all outstanding judgments against the applicant, relevant corporations, key personnel employed by each, or any person having a substantial interest in the applicant. For judgments of more than \$5,000, include a brief summary of the circumstances leading to each judgment, the amount of each judgment, the party to whom it is payable, how long it has been outstanding, and its current status. For judgments of less than \$5,000, the list need only identify the company or person involved and the total amount of the judgment still owed.

Compliance Disposition

The purpose of evaluating compliance disposition is to assure that the company and the personnel running the company do and will abide by the laws, rules, and regulations governing the applicant's operations and that management will be diligent in maintaining safe operations.

Data Required

The following information about compliance by the applicant, its owners, related companies, and their key personnel with the laws, rules, and regulations governing the applicant's services should be filed:

1. A description of the current status of all pending investigations, enforcement actions, and formal complaints filed by the Department, including the FAA, involving the applicant, relevant corporations, their key personnel (employed or to be employed) or persons having a substantial (*i.e.*, 10 percent or more) interest in any of these companies, involving the statute, and the rules and regulations of the Department, including the FAA.

- a. If any of these persons were affiliated (as a partner, officer, director, or stockholder) with any air carrier which, at the time of such affiliation, was found to have committed knowing, willful violations of the statute or any order, rule or regulation issued pursuant to that statute, such actions should be described.
 - b. The complaint or action should be identified, together with a brief summary of the circumstances and the current status.¹³ By “actions” or “complaints,” we mean those that have actually been filed with or taken by some official agency such as the Department, including the FAA, or a state, irrespective of whether the company or person believes it was or is guilty. For example, if the FAA proposed a civil penalty in an enforcement action against a company and the company made a compromise payment in settlement, that FAA action must be considered, even though the payment may not have been an admission of guilt.
2. A description of any charges (civil or criminal) within the past 10 years brought against any of the persons or companies listed above, of fraud, felony, or antitrust violations, or of unfair, anticompetitive or deceptive business practices, including their final disposition or current status.
3. A description of any aviation-related accidents or incidents which the applicant, its personnel, or any relevant corporation has had either during the year preceding the date of the application, or at any time in the past if the matter remains under investigation by the FAA, the NTSB, or by the company itself. This includes:
 - a. The date of the occurrence, the type of flight (Part 135, Part 121, etc.), the number of passengers on board, the extent of injuries to persons and damage to the aircraft, the name of the pilot, and any other pertinent information available. Copies of the pilot's reports, if available, should be filed.
 - b. The FAA and the NTSB file numbers, if known, for each accident and incident, and the findings of the NTSB and/or the FAA, including any violations cited against the company or any of its personnel, and any positive actions taken by the company as a result of the occurrence, if any were appropriate.
4. The following certification: “Pursuant to Title 18 United States Code Section 1001, I [*the individual signing the application, who shall be a principal owner, senior officer, or internal counsel of the applicant*], in my individual capacity and as the authorized representative of the applicant, have not in any manner knowingly and willfully falsified, concealed or covered up any material fact or made any false, fictitious, or fraudulent statement or knowingly used any documents which contain

¹³ Special attention should be paid to the Directors of Maintenance and Operations and the Chief Pilot, as persons holding these positions are more likely than others to be cited for FAA violations.

such statements in connection with the preparation, filing or prosecution of the application. I understand that an applicant who violates the provisions of 18 U.S.C. 1001 shall be fined not more than \$10,000 or imprisoned not more than five years, or both.” This certification must also be included in all subsequent written submissions filed by the applicant in connection with its application.

OTHER REQUIREMENTS

Prior to conducting any operations, an air carrier must also meet the insurance requirements set forth in Part 205 of the Department's rules, and become a signatory to the Interim Agreement of carriers, which relates to higher limits of liability for international passengers. This latter requirement applies whether or not the applicant is seeking a certificate to provide foreign air transportation. (Part 205 is reprinted in Part III of this packet. Blank copies of the Certificate of Insurance (OST Form 6410) and the Interim Agreement (OST Form 4523) are in Part IV of this packet. OST Form 4523 should be filed (an original plus three copies) separately, *i.e.*, not assembled as part of or an exhibit to the application.)

Once a company has been found fit, it becomes subject to the requirements of 49 U.S.C. 41110(e), which provides that the company must remain fit in order to continue to hold authority to provide air transportation services. If, after the commencement of air service, substantial changes occur, such as a change in ownership, a major change in the management team, a major expansion in operations (*e.g.*, going from the use of “small” to “large” aircraft), or a filing for protection from creditors under Chapter 11 of the U.S. Bankruptcy Code, the Air Carrier Fitness Division must be notified promptly so it may determine whether the company remains fit to operate. After receiving the company's description of the substantial change it has undergone, the staff of the Air Carrier Fitness Division will inform the company what additional information it must file to support its fitness to continue operating in light of the change.

In addition, if a company does not institute air transportation services within one year of being found fit by the Department to do so, its economic authority will be terminated for dormancy. On the other hand, if a company starts its air service within one year and subsequently ceases that service, its authority to operate under its economic authority is automatically suspended and it has one year from the date of cessation to resume service or that authority will be terminated.

Any carrier proposing to resume service within the one year must file with the Department, at least 45 days before the date on which service is expected to resume, a notice of such intent and the updated fitness information required by section 204.3, and must be authorized by the Department to recommence service. If the carrier wishes to resume air service in less than 45 days, it may request an exemption from the 45-day advance notice requirements of section 204.7. Any such exemption request

must be filed with the Department's Documentary Services Division (an original and 12 copies) and be accompanied by a \$280 filing fee.

If, however, the carrier will not be able to recommence operations before the end of one year, it may request an exemption from the revocation provisions of section 204.7. Such exemptions are not granted routinely, but only where “good cause” is shown. In showing good cause, the company would have to provide adequate evidence that it still meets the Department's fitness criteria and that it has completed nearly all of the steps to resume operations (*e.g.*, has the necessary personnel, financial resources, and aircraft, and has resolved any problems with the FAA). The exemption request must be filed before the end of the one-year dormancy period with the Department's Documentary Services Division (an original and 12 copies) and be accompanied by a \$280 filing fee.

Certificates are not transferable without prior Department approval. Applications for transfer of certificate authority should be filed jointly by the transferor and the transferee with the Documentary Services Division at least three months in advance of the proposed effective date of the transfer. Additional time would be required if objections are filed or complex or unusual issues are raised by the application. Applicable filing fees are \$290 (interstate authority) and \$255 (foreign authority). Under section 41105 of the statute, in order to approve a transfer, the Department must find that the proposed transfer is “consistent with the public interest,” that is, that the transferee is fit to conduct the proposed operations. The Department must also analyze the effects of the transfer on (1) the viability of each carrier involved in the transfer, (2) competition in the domestic airline industry, and (3) the trade position of the United States in the international air transportation market. Applicants for a certificate transfer should describe the circumstances of the transfer, attach evidence supporting the fitness of the transferee as set forth in section 204.3, and provide sufficient information to enable the Department to analyze the effects of the transfer as noted above.

PART II

SAMPLE APPLICATION

The following is a sample application which may be used as a guide in preparing an application for air carrier authority. The information in the brackets [] should be filled in or deleted as appropriate. For example, an applicant requesting interstate charter authority under section 41102 of the statute would delete the references to foreign and scheduled authority.

Material in support of the applicant's fitness should be submitted as exhibits or attachments to the application. If an applicant is seeking both interstate and foreign authority, the evidence in support of the applicant's fitness to operate need only be included with one of the applications and incorporated by reference in the other.

**BEFORE THE
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Application of

[NAME OF APPLICANT]

for a certificate of public convenience and necessity under
49 U.S.C. 41102 to engage in [interstate] [foreign] [scheduled]
[charter] air transportation

DOCKET

APPLICATION OF
[NAME OF APPLICANT]

Communications with respect to this document should be sent to:

*[Name, address and telephone
number of persons to be contacted]*

[Date of Application]

Notice: Any person who wishes to support or oppose this application must file an answer by *[28 days after receipt of the application by the Department of Transportation]* and serve that answer on all persons served with this application.

**BEFORE THE
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Application of

[NAME OF APPLICANT]

for a certificate of public convenience and necessity under
49 U.S.C. 41102 to engage in [interstate] [foreign] [scheduled]
[charter] air transportation

DOCKET

**APPLICATION OF
[NAME OF APPLICANT]**

[Name of Applicant] submits this application for a certificate of public convenience and necessity authorizing [interstate] [foreign] [scheduled] [charter] air transportation pursuant to section 41102 of Title 49 of the United States Code (the statute).

In support of its application [Name of Applicant] states the following:

Applicant is a [corporation] [partnership] [sole proprietorship] organized on [date] under the laws of the State of _____. Its address and telephone are:

Applicant is a citizen of the United States as defined in section 40102(a)(15) of the statute. *[Describe the ownership of the applicant and indicate whether its officers, directors, and key personnel are U.S. citizens. If not, indicate their nationality and their relationship to, or interest in, the applicant.]*

Applicant is [newly formed] [currently engaged in (describe current business)].

Applicant requests authority to engage in [interstate] [foreign] [scheduled] [charter] air transportation of persons, property, and mail:*

* The applicant does not have to request authority to carry persons, property, and mail. It may request passenger only, cargo only, mail only, passenger and cargo, passenger and mail, or cargo and mail authority.

[Describe proposed operations, including markets to be served, and aircraft to be used.]

Information in support of the applicant's fitness to conduct the proposed air transportation operations is contained in *[Exhibits]* *[Attachments]* 1 through ____.

[If applying for both interstate and foreign authority, add the following paragraph to the application for foreign authority:

Concurrently, applicant is seeking authority to engage in interstate air transportation. Information in support of the applicant's fitness to operate has been included with that application and is incorporated by reference here. Additional information in support of the applicant's proposed foreign air transportation operations is included as *[Exhibits]* *[Attachments]* 1 through ____.]

The contents of this application and the attached exhibit(s) are true and correct to the best of my knowledge and belief. *[Name of person signing application, who shall be a principal owner, senior officer, or internal counsel of the applicant]*, individually and on behalf of applicant, certifies that, pursuant to Title 18 United States Code Section 1001, *[he]* *[she]* has not in any manner knowingly and willfully falsified, concealed or covered up by trick, scheme, or device any material fact, or made any false, fictitious or fraudulent statements or representations, or made or used any writing or document knowing same to contain any false, fictitious or fraudulent statement or entry in connection with the preparation, filing and prosecution of this application. *[He]* *[She]* further acknowledges and understands that whoever violates the provisions of 18 U.S.C. 1001 shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

WHEREFORE, *[Name of Applicant]* respectfully requests that the Department grant this application, and any such other relief as it may find to be in the public interest.

Respectfully submitted,

[Signature and Title]

Attachments *[certificate of service, and exhibits and information required under section 204.3]*

SAMPLE CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I hereby certify that I have on this day served the foregoing application for [interstate] [foreign] air transportation authority by first class mail, postage prepaid, upon the persons shown in the following service list.

[Signature and title]

[Date of Service]

SERVICE LIST

[See section 302.1705(b) included in Part III.]

PART III

APPLICABLE DEPARTMENT OF TRANSPORTATION REGULATIONS

PART IV

SAMPLE FORMS

AFFIDAVIT OF CITIZENSHIP

STATE OF _____

COUNTY OF _____

_____ *[name]* _____ being first duly sworn, deposes and says:

1. That he/she is duly elected, qualified, and serving as _____ *[officer]* _____.
of _____ *[applicant's name]* _____ and that he/she is authorized to and
does make this affidavit for it.

2. That _____ *[applicant's name]* _____ is a citizen of the United States
within the meaning of 49 U.S.C. 40102(a)(15).

_____ *[signature]* _____.

Subscribed and sworn to before me this _____ day of _____, 199_.

_____ *[signature of Notary Public]* _____.

(SEAL)

AFFIDAVIT OF SAFETY COMPLIANCE

STATE OF _____

COUNTY OF _____

_____ *[name]* _____ being first duly sworn, deposes and says:

1. That he/she is duly elected, qualified, and serving as _____ *[officer]* _____.

of _____ *[applicant's name]* _____ and that he/she is authorized to and
does make this affidavit for it.

2. That all aircraft owned and leased by _____ *[applicant's name]* _____.

have been certified by the Federal Aviation Administration and currently comply with
all applicable Federal Aviation Administration safety standards under Parts *[121]*
[135],

as well as the noise standards of Part 36, of the Federal Aviation Regulations.

_____ *[signature]* _____.

Subscribed and sworn to before me this _____ day of _____, 199_.

_____ *[signature of Notary Public]* _____.

(SEAL)

**INSTRUCTIONS FOR COMPLETING
CERTIFICATE OF INSURANCE
OST FORM 6410**

This page is obsolete. For current page, SEE SEPARATE DOCUMENT:
A:\PROJECTS\INST6410.DOC

This form is to be completed by an officer or authorized representative of an insurance company or broker and an original, signed copy is to be filed with the Department of Transportation, Attention: Air Carrier Fitness Division (for commuter air carriers) or Attention: Regulatory Analysis Division (for certificated and foreign air carriers), 400 Seventh Street, S.W., Washington, D.C. 20590.

Line 1. Indicate name and address of the insurance company.

Lines 2-3. Indicate name and address of air carrier insured by the policy. If an insurance policy is issued to a person or company other than the air carrier, the certificate of insurance must indicate that the air carrier is also covered under that policy.

Line 4. Indicate the effective date of the policy. Note that the policy must remain in effect and cannot be cancelled on less than ten days' written notice to the Department.

Section 1. Indicate whether the insurance company is licensed to issue aircraft insurance policies in the United States or by a foreign government or is an approved surplus lines insurer. Note that more than one block may be checked.

Section 2. Part A. U.S. Air Taxi Operators with Part 298 Authority Only. This part should be completed only for air taxi operators with authority under Part 298 to operate aircraft having **60 seats or less** or a **payload capacity of 18,000 pounds or less, not in scheduled passenger service**. Indicate whether the insured air carrier has separate coverages or combined coverages by marking the appropriate block and placing the policy number in the specified place. Please note that the minimum limits of liability required by the Department are already listed on the certificate.

Section 2. Part B. U.S. Commuter and Certificated Air Carriers Operating Small Aircraft. This part should be completed only for commuter or certificated air carriers operating aircraft that have **60 seats or less** or a **payload capacity of 18,000 pounds or less**. Indicate whether the insured air carrier has separate coverages or combined coverages by marking the appropriate block and placing the policy number in the specified place. Please note that the minimum limits of liability required by the Department are already listed on the certificate.

Section 2. Part C. U.S. Certificated Air Carriers Operating Large Aircraft. This part should be completed only for certificated air carriers operating aircraft that have **more than 60 seats** or a **payload capacity of more than 18,000 pounds**. Indicate whether the insured air carrier has separate coverages or combined coverages by marking the appropriate block and placing the policy number in the specified place. Please note that the minimum limits of liability required by the Department are already listed on the certificate.

Section 3. Indicate whether the policy covers (1) all aircraft operated by the insured air carrier, or (2) specify the general groups or types of aircraft which the policy covers, or (3) the FAA registration number and the type of each aircraft covered by the policy. For air taxi

operators and commuter air carriers: All aircraft listed on the carrier's Part 298 registration form (OST Form 4507) must be covered by a currently effective certificate of insurance, and the FAA registration number of such aircraft must conform exactly to that listed on OST Form 4507.

Section 4. Indicate name, address, contact person, and telephone numbers (office/fax) of insurer and, if applicable, of the broker. This form must be signed by an officer or authorized representative of the insurance company or broker.

**INTERIM AGREEMENT OF AIR CARRIERS
("MONTREAL AGREEMENT")
EXPLANATORY STATEMENT**

In 1934, the United States became a party to an international agreement, generally known as the Warsaw Convention, which was the first agreement between countries to provide for any uniform body of law with respect to the rights and responsibilities of passengers and air carriers in international transportation. Among other things, the Warsaw Convention set a limit on the liability an air carrier could incur with respect to bodily injury or death of any passenger carried in international air transportation,¹ which, in today's terms, is approximately \$10,000.

In 1966, the United States indicated its intent to denounce the Warsaw Convention because of its dissatisfaction with the Convention's \$10,000 limit on an air carrier's liability to passengers. The U.S. withdrew its denunciation when all carriers serving this country, both U.S. and foreign, entered into the "Montreal Agreement." That Agreement increases the Warsaw Convention liability limit to \$75,000 per passenger.² The Agreement also provides that a carrier is strictly liable for a passenger's bodily injury or death up to the liability limit even if the carrier can prove that it was not negligent in causing the accident.

The Department requires all air carriers to become signatories to the Montreal Agreement to ensure that passengers are covered by the higher limits of liability provided by that Agreement. This is accomplished by completing and filing OST Form 4523.

INSTRUCTIONS FOR COMPLETING OST FORM 4523

1. The form must be signed by an officer of the carrier.
2. The signing person's title and the name and address of the air carrier should be listed in the space provided.
3. An original and three copies of the form should be filed with the Documentary Services Division, Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590. If filed at the time of application for air carrier authority, the form should be filed separately, *i.e.*, not assembled as part of or an exhibit to the application.

¹ International air transportation not only includes transportation between a U.S. point and a foreign point, but also service wholly within the U.S. if the passenger holds a ticket providing an interline connection to a foreign point.

² This limit on liability should not be confused with the Department's mandatory liability insurance requirements for air carriers, which are required for all operations, both domestic and international, and which are intended to provide a source of funds in the event of an aircraft accident.